

NEW MEXICO SCHOOL FOR THE DEAF

1060 Cerrillos Road

Santa Fe, NM 87505

Phone 505-476-6300 • Fax 505-476-6315

E-mail Sam.Montoya@nmsd.k12.nm.us

October 23, 2012

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street SW
Washington, DC 20554
ELECTRONICALLY FILED VIA ECFS

Re CC Docket No. 02-6

**In the matter of Request for Review by New Mexico School for the Deaf of a
Decision of the Universal Service Administrator**

Dear Secretary Dortch,

With this letter New Mexico School for the Deaf ("NMSD") appeals¹ a decision² by the Universal Service Fund Administrator ("USAC") under the schools and libraries universal service support mechanism ("E-Rate") to set the funding Service Start Date after the first day of the funding year.

NMSD further requests that the Wireline Competition Bureau ("Bureau") exercise its best efforts to act on this appeal within the 90-day timeline specified at 47 CFR § 54.724. NMSD is mindful of the broad scope of responsibility shouldered by the Bureau and is very respectful of the dedicated service rendered daily by Bureau staff. However, since unfortunately it is our students who will bear the consequences of our inability to effectively plan for the operation of the school while this matter is unresolved, we would ask only that the Bureau do its best to expedite its full examination of the evidence and to render a reasoned and fair decision.

Background

NMSD is a school dedicated to serving the special educational needs of about 150 New Mexico deaf and hearing-impaired students.

As a result of our confusion about whether a technology plan was needed for FRN 2238958 – exasperated by language on the Form 486 which is not consistent with the technology plan rules for FY2011 – our Form 486 filing was delayed. By the time we

¹ Any person aggrieved by an action taken by a division of the Universal Service Fund Administrator may seek review; see 47 CFR § 54.719(c).

² See Exhibit A, attached

were able to confirm that in fact no technology plan was necessary for this funding request, the 120-day Form 486 filing deadline had passed. And in a notification letter dated 10/2/2012, USAC notified us that we would lose nearly half of the funding commitment for this funding request.

Due to budget constraints, NMSD's IT operations staff consists of only one person, even though the position should be staffed by at least 2.5 FTEs (full-time equivalents). This person, who is responsible for all technology at two campuses, is also responsible for NMSD's E-Rate filings.

Since all of NMSD's students are deaf or hearing-impaired and have special educational needs, NMSD is absolutely dependent on the E-Rate discount in order to prepare its students for successful and productive lives and careers.

Although NMSD management does exercise its best efforts to ensure absolute compliance with all E-Rate rules and deadlines, realistically it is beyond the control of NMSD to totally eliminate the possibility of the isolated clerical or administrative error.

Analysis

Due to factors not reasonably within its control, NMSD was unable to fully comply with the requirement to file Form 486 by the normal 120 day limit after the latter of the service start date and the Funding Commitment Decision Letter date for the funding requests cited in Exhibit A. To the best of our knowledge, our E-rate funding application is otherwise in full compliance with all FCC rules and USAC requirements.

In *Alaska Gateway*³, the Bureau found that where special circumstances are present and a Form 486 was not filed on a timely basis, good cause exists to grant a waiver of the filing deadline and direct USAC to process the applicant's Form 472 reimbursement application without a postponement of the funding start date. The Bureau noted that in these cases the applicants missed a procedural deadline and did not violate a substantive rule. The Bureau has consistently applied the *Alaska Gateway* standard in subsequent orders granting waivers of the Form 486 filing deadline, including *State of Arkansas Department of Information Systems*⁴, *Alcona County Library*⁵, *Children of Peace School*⁶, *Academy St. Benedict – Stewart*⁷, *Bancroft Neurohealth*⁸, *Archdiocese of Chicago School*⁹, *Beebe Public Schools*¹⁰, and *Albertville City Schools*¹¹.

³ *Alaska Gateway School District et al*, 21 FCC Rcd 10182 (DA 06-1871)

⁴ *State of Arkansas Department of Information Systems et al*, 23 FCC Rcd 9373 (DA 08-1418)

⁵ *Alcona County Library et al*, 23 FCC Rcd 15500 (DA 08-2379)

⁶ *Children of Peace School et al*, 25 FCC Rcd 5492 (DA 10-885)

⁷ *Academy St. Benedict – Stewart et al*, 25 FCC Rcd 17309 (DA 10-2352)

⁸ *Bancroft Neurohealth et al*, 26 FCC Rcd 10948 (DA 11-1239)

⁹ *Archdiocese of Chicago School* 27 FCC Rcd 200 (DA 12-28)

¹⁰ *Beebe Public Schools*, 27 FCC Rcd 3930 (DA 12-569)

¹¹ *Albertville City Schools*, 27 FCC Rcd 6094 (DA 12-894)

The cited orders are consistent with *Bishop Perry*¹², where the Commission found that under certain circumstances, rigid adherence to certain E-rate rules and requirements that are “procedural” in nature does not promote the goals of section 254 of the Telecommunications Act of 1996 – ensuring access to discounted telecommunications and information services to schools and libraries – and therefore does not serve the public interest.

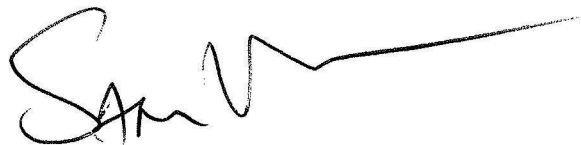
The Bureau further noted in *Alaska Gateway* and in *Alcona County Library* that denying the petitioners’ requests would create undue hardship and prevent these otherwise eligible schools and libraries from receiving funding that they need to bring advanced telecommunications and information services to their students and patrons. That would certainly be the case if NMSD were to be denied the opportunity to request reimbursement for its eligible expenses for the entirety of the funding year. The consequences of a denial of funding would not further the purposes of section 254(h) of the Telecommunications Act of 1996 or serve the public interest.

Request for Relief

For the reasons stated in this letter, NMSD respectfully requests that the Bureau direct USAC to set the Service Start Date to the first day of the funding year for each funding request cited in Exhibit A. We also ask that the Bureau, consistent with precedent, direct USAC to waive any of its subsequent deadlines related to the late-filed FCC Form 486¹³, including the deadline for invoicing USAC for reimbursement.

Finally, on behalf of our current students, NMSD respectfully requests that the Bureau expedite consideration of this petition. Timely action by the Bureau would support the goals of the E-Rate program, especially with respect to our current students whose educational success would be compromised by a delay in our receipt of our committed E-Rate reimbursement funds.

NEW MEXICO SCHOOL FOR THE DEAF

A handwritten signature in black ink, appearing to read 'Sam', with a long horizontal line extending to the right.

Sam Montoya
IT Manager

¹² *Bishop Perry Middle School et al*, 21 FCC Rcd 5316 (FCC 06-54)

¹³ E.g., see *Children of Peace School et al*, footnote 24

EXHIBIT A

In the matter of Request for Review by New Mexico School for
the Deaf of a Decision of the Universal Service Administrator
dated October 23, 2012



Schools and Libraries Division

FORM 486 NOTIFICATION LETTER
(Funding Year 2011: 07/01/2011 - 06/30/2012)

October 2, 2012

SAM MONTOYA
NEW MEXICO SCHOOL FOR THE DEAF
1060 CERRILLOS RD
SANTA FE, NM 87505

Re: Form 486 Application Number: 895371
Applicant's Form 486 Identifier: NMSD486-FY

This letter is to notify you that the Universal Service Administrative Company (USAC) has received and accepted an FCC Form 486, Receipt of Service Confirmation Form, from you. This notification is to confirm the information that you provided. This information is being shared with the service provider whose SPIN you identified on each Funding Request Number (FRN).

You may be receiving this letter to revise or correct a previous Form 486 Notification Letter. The information contained in this letter supersedes any previous notification you may have received, including, but not limited to, a previously adjusted Service Start Date or previously reduced funding commitment.

NEXT STEPS

Discuss with your service provider whether you would like discounts on your bills or to pay your bills in full and be reimbursed for discounts.

Invoice USAC before the invoice deadline using the applicant invoice (BEAR Form - FCC Form 472) for reimbursements after paying the bills in full or the service provider invoice (SPI Form - FCC Form 474) for discounts. Whichever method you choose, you must pay your non-discount portion, as stated in Program rules. Program rules also require that participants maintain all documentation for at least five years after delivery of discount service.

TO APPEAL THE SERVICE START DATE/FUNDING COMMITMENT CHANGE DECISION

If you wish to appeal the Service Start Date change(s) and/or funding commitment adjustment(s) indicated in this letter, your appeal must be received by USAC or postmarked within 60 days of the above date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and email address for the person who can most readily discuss this appeal with us.

Schools and Libraries Division - Correspondence Unit
30 Lanidex Plaza West, PO Box 685, Parsippany, NJ 07054-0685
Visit us online at: www.usac.org/sl

P281ZT00102550 -025500203J0000

2. State outright that your letter is an appeal. Include the following to identify the letter and the decision you are appealing:
 - appellant name,
 - applicant or service provider name, if different than appellant,
 - applicant BEN and service provider SPIN,
 - Form 486 Number 895371 and FRN(s) as assigned by USAC,
 - "Form 486 Notification Letter for Funding Year 2011", AND
 - the exact text or the decision that you are appealing.
3. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep a copy of your entire appeal, including any correspondence and documentation
4. If you are an applicant, please provide a copy of your appeal to the service provider(s) affected by the USAC's decision. If you are a service provider, please provide a copy of your appeal to the applicant(s) affected by the USAC's decision.
5. Provide an authorized signature on your letter of appeal.

To submit your appeal to USAC by email, email your appeal to appeals@sl.universalservice.org. USAC will automatically reply to incoming emails to confirm receipt.

To submit your appeal to us by fax, fax your appeal to (973) 599-6542.

To submit your appeal to us on paper, send your appeal to:

Letter of Appeal
Schools and Libraries Division - Correspondence Unit
30 Lanidex Plaza West
PO Box 685
Parsippany, NJ 07054-0685

You have the option of filing an appeal with USAC or directly with the Federal Communications Commission (FCC). You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received by the FCC or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. We strongly recommend that you use the electronic filing options described in the "Appeals Procedure" posted on our website. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554.

A guide to the data reported in our letter reports is posted in the Reference Area of our website. Complete Program information, including invoice deadlines is also posted on our website. You may also contact our Client Service Bureau by email using the "Submit a Question" link on our website, toll-free by fax at 1-888-276-8736, or toll-free by phone at 1-888-203-8100.

Schools and Libraries Division
Universal Service Administrative Company

FORM 486 NOTIFICATION LETTER REPORT
(Funding Year 2011)

Funding Request Number: 2238958
Form 471 Application Number: 822110
Service Provider Name: CenturyLink Qwest Corporation
Service Provider Identification Number: 143005231
Billing Account Number: NA
Service Start Date: 12/26/2011*
Service Start Date Change Explanation: 120-DAY 486 DEADLINE
Adjusted Funding Commitment: \$8,831.47



AP486NL/Schools and Libraries/USAC

Page 3 of 3

10/02/2012

P28IZT00102550 -02550030330000

00831